

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

ORIGINAL

In the Matter of )  
 )  
McLEODUSA TELECOMMUNICATIONS )  
SERVICES, INC. )  
 )  
Petition for Preemption of Nebraska Public )  
Service Commission Decision Permitting )  
Withdrawal of Centrex Plus Service by )  
U S West Communications, Inc. )

CC Docket No. 98-84

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION**

MCI Telecommunications Corporation (MCI) hereby submits its comments in support of the above-captioned petition filed by McLeodUSA Telecommunications Services (McLeod).<sup>1</sup> MCI urges the Commission to preempt the order of the Nebraska Public Service Commission (PSC) permitting the withdrawal of U S West Communications, Inc.'s (US West) of Centrex Plus service, because the PSC's decision violates section 253(a) of the Telecommunications Act of 1996 (Act). As evidenced by the elimination of McLeod's primary means of providing local service, permitting US West to withdraw the Centrex Plus service has had the effect of prohibiting resellers from providing Centrex services. US West's withdrawal of Centrex Service was solely designed to prevent competitors from reselling local service.

**I. THE NEBRASKA PSC'S ORDER PERMITTING THE WITHDRAWAL VIOLATES SECTION 253(a) BECAUSE IT HAS THE EFFECT OF PROHIBITING THE ABILITY OF ANY ENTITY FROM PROVIDING TELECOMMUNICATIONS SERVICES**

MCI agrees fully with McLeod that the Nebraska PSC's sanctioning of US West's

<sup>1</sup> Petition of McLeodUSA Telecommunications Services, Inc. For Preemption, CC Docket No. 98-84, filed May 29, 1998 (Petition).

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withdrawal of Centrex service violates section 253(a) of the Act because it prohibits entities like McLeod from offering a telecommunications service, in this instance, Centrex Plus.<sup>2</sup> At the hearing held by the Nebraska PSC, McLeod, MCI and other competitive local exchange carriers (CLECs) demonstrated the negative impact the withdrawal of Centrex service would have on the development of local competition. Despite this extensive testimony, the Nebraska PSC nevertheless permitted US West to withdraw the service. MCI believes that the Nebraska PSC failed to assess the anticompetitive effect on the development of local competition if US West was permitted to withdraw its Centrex Service.

Based on the text of the state's decision, it does not appear that the state commission seriously considered the impact of US West's withdrawal of service on competition. Rather, the state commission devoted a good deal of its order justifying the practice of grandfathering and withdrawal of service as a general practice, not how it would specifically affect the emerging competition in Nebraska's local market.<sup>3</sup> For example, the fact that McLeod would be eliminated as an effective competitor to US West in the local market is a significant factor in assessing whether the withdrawal of service would be anticompetitive. While the Commission left to the states to decide whether withdrawals of certain services will have an anticompetitive effect,<sup>4</sup> it did express concern with the ILECs' ability to withdraw service "where resellers are purchasing such services for resale in competition with the incumbent."<sup>5</sup>

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<sup>2</sup> Petition at 6.

<sup>3</sup> Petition, Exhibit A at 4.

<sup>4</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No, 98-96, ¶ 968 (rel. Aug. 8 1996).

<sup>5</sup> *Id.*

Section 253 of the Act empowers the Commission to preempt state and local legal and regulatory requirements that impede competitive entry.<sup>6</sup> In the Texas Preemption Order,<sup>7</sup> the Commission noted that section 253(a) requires the Commission “to preempt not only express restrictions on entry, but also restrictions that indirectly produce that result.”<sup>8</sup> Thus, the Commission needs to determine whether a restriction “materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”<sup>9</sup>

The Nebraska PSC’s approval of US West’s withdrawal of Centrex service has produced the same result as an express prohibition on provisions of telecommunications services in the Nebraska market. Due solely to the withdrawal, customers in Nebraska do not have the benefit of competitive alternatives for local service, unlike customers in their neighboring states have. For McLeod, for example, reselling US West’s Centrex service was the primary platform for delivering local exchange service in Nebraska.<sup>10</sup> For many CLECs, reselling Centrex service is currently the most efficient means of entering the local market and getting local competition

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<sup>6</sup> 47 U.S.C. § 253(d).

<sup>7</sup> Public Utility Commission of Texas Petition for Declaratory Ruling and /or preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1996, CCBPol 96-13, FCC 97-346 (rel. Oct. 1, 1997) (Texas Preemption Order).

<sup>8</sup> *Id.* at ¶ 41.

<sup>9</sup> See e.g., TCI Cablevision of Oakland County, Inc., CSR-4790, FCC 97-331 at ¶97 (re Sept. 19, 1997) (TCI); California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, California pursuant to Section 253(d) of the Communications Act of 1934, CCBPol 96-26, Memorandum Opinion and Order, 12 FCC Red 14191, 14206 (1997) (Huntington Park Order) at ¶31.

<sup>10</sup> *Id.*

started.<sup>11</sup> The net result of the withdrawal is that, unlike customers in the rest of US West's territory, customers in Nebraska cannot enjoy the benefits of competition.

MCI emphasizes that Congress expressly gave competitors three options for entering the local exchange markets, construction of their own facilities, use of unbundled network elements and resale.<sup>12</sup> In the Texas Preemption Order, the Commission made clear that a state may not "require that an entity provide telecommunications services via its own facilities and limit the entity's ability to resell incumbent LEC services or restrict the use of unbundled network elements provided by the incumbents."<sup>13</sup> The withdrawal of the Centrex service effectively eliminates the resale option for many CLECs altogether in Nebraska, where there are now no resellers to compete for US West's Centrex product.<sup>14</sup>

US West's grandfathering of its Centrex service is also suspect. As the dissent in *Nebraska Order* points out, "Centrex Plus is not truly withdrawn" because US West is "allowing some customers to expand Centrex Plus service, while denying the same Centrex Plus service to other interested customers," that is, resellers.<sup>15</sup> Allowing the withdrawal of Centrex is thus in direct conflict with the pro-competitive provisions of the Act because it forecloses an essential

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<sup>11</sup> In the Matter of MCI McLeod Telemanagement, Inc., MCI Telecommunications Corporation, and AT&T Communications of the Midwest, Inc. v. US West Communications, Inc., Docket FC-1252, 1253, 1254, Testimony of Anthony J. DiTorro at 5 (MCI Testimony).

<sup>12</sup> 47 U.S.C. §§ 251(c)(2), (3), (4) (1996).

<sup>13</sup> Texas Preemption Order, ¶ 74.

<sup>14</sup> MCI Testimony at 7.

<sup>15</sup> See also MCI Testimony, at 7-8. MCI also notes that the grandfathering period of seven years is rather extensive for a service that is withdrawn.

means of entry that competitive carriers utilize to enter local exchange markets.<sup>16</sup>

## **II. THE CIRCUMSTANCES SURROUNDING US WEST'S ATTEMPT TO WITHDRAW ITS CENTREX SERVICE DEMONSTRATE THE ANTICOMPETITIVE EFFECTS OF THE WITHDRAWAL**

The circumstances surrounding US West's attempt to withdraw its Centrex service demonstrates that the only reason US West sought to withdraw the service is for anticompetitive reasons, not because of any lack of demand for the service.<sup>17</sup> Because of its attractive features and cost-effectiveness, Centrex was in growing demand. There is no reason, except for anticompetitiveness, to ever withdraw such a lucrative and useful service -- with no substitute available.<sup>18</sup> In fact, US West has conceded that there is no other reason for its withdrawal of Centrex service but to prevent resellers from utilizing that service.<sup>19</sup> Such anticompetitive attempts have been flatly rejected by eleven surrounding states -- Oregon, Iowa, South Dakota, North Dakota, Colorado, Utah, Minnesota, Wyoming, Arizona, Washington, and New Mexico -- which all found that the exact same withdrawal of Centrex by US West to be a barrier for competitive entry and in violation of federal law.<sup>20</sup> Every state that has ruled on US West's requests to withdraw Centrex service has concluded that the withdrawal would result in

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<sup>16</sup> *See also* Petition at 12.

<sup>17</sup> Local Competition Order, ¶ 968.

<sup>18</sup> Although US West claimed that another service would be available as a substitute, it has yet to make that service available.

<sup>19</sup> Petition at 24 (quoting the testimony of Mr. Perry W. Hooks, Jr., Director of Markets-Regulatory Strategy for US West, that the reason for its withdrawal is the "price arbitrage," which "occurs when Centrex Plus resellers take advantage of the difference in price between the higher-priced basic business exchange rate and lower-priced Centrex Plus station line rate).

<sup>20</sup> *See also* Petition at 21-23.

an unreasonable restriction on resale and otherwise contrary to the development of local competition.<sup>21</sup> The other states in US West's region recognized the withdrawal of Centrex service for what it was -- an anticompetitive act in violation of the Act.<sup>22</sup>

US West's anticompetitive attempts here are consistent with its previous attempts (some were successful) in withdrawing yet another service that competitors found to be an efficient means of providing competing local services, Local Area Data Service (LADS).<sup>23</sup> In many of its states, for example, US West has been trying to discontinue LADS circuits, which allowed competitors to offer cost effective xDSL and other wide-band capabilities using elements of US West's local network.<sup>24</sup> Digital subscriber line technologies permit high speed transmission of data over lines such as LADS and are of particular interest for entities needing high speed transmission capacity, such as Internet Service Providers (ISPs). Despite increasing demand for LADS by ISPs, US West nevertheless sought to eliminate the service.

Congress could not have envisioned a situation where ILECs are allowed to get around the procompetitive provisions of the Act by employing these kinds of tactics. The Commission

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<sup>21</sup> Petition at 21-23.

<sup>22</sup> *Id.* at 14-15.

<sup>23</sup> LADS is a two-point private line circuit within one wire center. It is comprised of two unloaded copper loops to the customer locations, connected at the central office, with an overall distance limitation of six miles, three miles in each direction.

<sup>24</sup> See e.g., In the Matter of Advice Letter 2663 Regarding U S WEST Communications' Verified Application Per Rule 57, Investigation and Suspension of Tariff Sheets Filed By U S WEST Communications, Inc., With Advice Letter No. 2663 Regarding Local Area Data Service (LADS), Statement of Position Filed on Behalf of Staff, Docket Nos. 97K-342T, 97A-243T, 97S-289T, at 7 (filed Jan. 5, 1998) (Staff Recommendation); In the Matter of Advice Letter No. 2663 Regarding U S WEST Communications' Verified Application Per Rule 57, Recommended Decision of Administrative Law Judge Ken F. Kirkpatrick Permanently Suspending Tariff Sheets Filed Under Advice Letter No. 2663, at 4 (rel. Jan 12, 1998) (ALJ Recommended Decision).

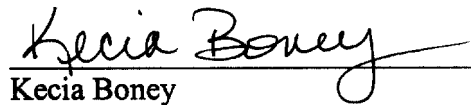
should preempt the Nebraska PSC's sanctioning of US West's withdrawal of Centrex service and pull the plug on such anticompetitive maneuvering once and for all.

### **CONCLUSION**

For the foregoing reasons, the Commission should preempt the Nebraska PSC's sanctioning of the US West's Centrex withdrawal.

Respectfully submitted,

**MCI TELECOMMUNICATIONS  
CORPORATION**

A handwritten signature in cursive script, reading "Kecia Boney", is written over a horizontal line.

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Dated: July 10, 1998

## CERTIFICATE OF SERVICE

I, Mellanese Farrington, hereby certify that on this 10th day of July 1998, I served by first-class United States Mail, postage prepaid, a true copy of the foregoing Comments, upon the following:

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